

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

DENNY OBERMILLER	:	
Petitioner,	:	CASE NO. 1:19-cv-2193
vs.	:	Judge John R. Adams
TIMOTHY SHOOP, Warden	:	
Respondent	:	Capital Habeas Corpus
	:	

Petitioner Obermiller's Supplemental Motion for Appointment of Counsel

Petitioner Obermiller, an Ohio death row prisoner, moves this Court to appoint counsel on his behalf for habeas corpus review. 28 U.S.C. 2254. On November 12, the Court stated that undersigned counsel would not be appointed to represent Mr. Obermiller. As of this filing however, no counsel has been appointed and the statute of limitations to file a timely habeas petition continues to run. Mr. Obermiller is entitled to the appointment of counsel for habeas proceedings and requests expedited appointment of counsel. Further support for this motion is set forth in the attached Memorandum.

Respectfully submitted,

/s/John P. Parker
0041243
988 E. 185th Street
Cleveland, OH 44119
216-881-0900
advocateparker@gmail.com

/s/Michael Benza
0061454
17850 Geauga Lake Road
Chagrin Falls, OH 44023
216-319-1247
michael.benza@case.edu

**Memorandum in Support of Petitioner Obermiller's Supplemental
Motion for Appointment of Counsel**

Denny Obermiller is before this Court seeking the appointment of counsel for habeas corpus proceedings under 18 U.S.C. 3599(a)(2) and 18 U.S.C. 3006A. On September 23, 2019, undersigned counsel filed a Motion to Proceed IFP [Doc. 2], a Motion for Appointment of Counsel [Doc. 3], and a Notice of Intent to File Petition for Writ of Habeas Corpus. [Doc. 4].

The case was assigned to this Court. The Court held a status conference regarding the appointment of counsel on November 12, 2019. During this status conference the Court stated that undersigned counsel would not be appointed to represent Mr. Obermiller and that alternative counsel would be located and appointed by the Court. The Court did not issue a judgment entry or order resulting from the status conference.

Given the statements of Mr. Obermiller and the Court at the status conference, counsel are not seeking appointment in this matter. However, counsel believe they are ethically and professionally required to ensure that Mr. Obermiller's right to counsel and right to file a timely petition for Writ of Habeas Corpus are protected. Under Ohio Rules of Professional Conduct Rule 1.18(a) counsel owe a duty to Mr. Obermiller as a prospective client. Under Ohio Rules of Professional Conduct Rule 1.2(c) counsels' representation of Mr. Obermiller is limited to initiating his habeas litigation and ensuring that counsel is appointed.

Undersigned counsel calculate that Mr. Obermiller's statute of limitations for a timely petition will run on August 20, 2020. Whoever is appointed to represent Mr. Obermiller must review the state court records, investigate the issues presented at trial, direct appeal, and state post-conviction as well as any other state court litigation. The issues in capital habeas cases are complex, factually dependent and often involve issues of exhaustion and procedural default. Congress

established the one-year statute of limitations in light of the complexity of these cases and the need for counsel to be given adequate time to properly represent petitioners.

It has now been 122 days since undersigned started the litigation in this Court and 156 days since the statute of limitations began to run. That is time that any appointed counsel could have used to begin the process of preparing the habeas petition.

CONCLUSION

Mr. Obermiller is entitled to counsel under 18 U.S.C. § 3599. For these reasons, and the reasons set forth in the Motion for Appointment of Counsel, Doc. 3, Mr. Obermiller requests the appointment of qualified attorneys due to “the seriousness of the possible penalty and to the unique and complex nature of the litigation.” 18 U.S.C. 3599(d).

Undersigned have consulted with the Capital Habeas Unit of the Federal Public Defender’s Office for the Northern District. That office is willing to accept the appointment to represent Mr. Obermiller.

Respectfully submitted,

/s/John P. Parker - 0041243
988 E. 185th Street
Cleveland, OH 44119
216-881-0900
advocateparker@gmail.com

/s/Michael Benza - 0061454
17850 Geauga Lake Road
Chagrin Falls, OH 44023
216-319-1247
michael.benza@case.edu

Certificate of Service

I hereby certify that a true copy of the foregoing Supplemental Motion for Appointment of Counsel was filed electronically. Notice of this filing will be sent to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system. Denny Obermiller is served via U.S. Mail.

/s/ Michael J. Benza
MICHAEL J. BENZA - 0061454